

1 THE HONORABLE ROBERT S. LASNIK
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10 UNITED STATES DISTRICT COURT
11 JAMES MCDONALD,
12 Plaintiff,
13 v.
14 ONEWEST BANK, FSB, NORTHWEST
15 TRUSTEE SERVICES, INC., MORTGAGE
16 ELECTRONIC REGISTRATION SYSTEMS,
17 INC., INDYMAC BANK FSB, DOES 1-50,
Defendants.

No. 2:10-cv-01952-RSL

DEFENDANTS' MOTION TO SET
PRETRIAL DEADLINE AND COMPEL
COMPLIANCE WITH DEADLINES

NOTE ON MOTION CALENDAR: March
1, 2013

18 Defendants file this motion for two reasons: (1) to request that the Court set a deadline
19 for motions in limine after defendants have received plaintiff's Pretrial Statement; and (2) to
20 request that the Court compel plaintiff's compliance with pretrial deadlines and allow
21 defendants seven days from receiving plaintiff's Pretrial Statement to serve their own Pretrial
22 Statement.

23 Defendants respectfully request that the Court set a deadline for motions in limine to be
24 filed prior to the trial in this case, set for April 1, 2013. This case was previously set for trial on
25 December 3, 2012, and motions in limine were due November 5, 2012. Before the trial was re-
26 set for April 1, both sides filed motions in limine. However, plaintiff had not served his Pretrial

1 Statement—identifying exhibits and witnesses, as required by Local Rule 16(h)—and
 2 defendants moved in limine in November based on their best guess at what plaintiff might try
 3 to introduce at trial.¹ In preparation for the April 1 trial date, defendants now request that the
 4 parties be allowed to file motions in limine after being apprised of proposed exhibits and
 5 witnesses in the Pretrial Statements. Defendants would be prepared to supplement the
 6 previously-filed motions in limine, or to file one document incorporating all motions in limine,
 7 according to the Court's preference.

8 Plaintiff has again missed the deadline for serving his Pretrial Statement, which was due
 9 on February 18, 30 days before the Pretrial Order is due. LCR 16(h). On February 19, defense
 10 counsel notified plaintiff's counsel that plaintiff's Pretrial Statement was due, and were told by
 11 plaintiff's counsel that she would work on it this week. Defendants responded that further
 12 delay was not acceptable, as it prejudices defendants' ability to serve timely their own Pretrial
 13 Statement, which is required to respond to items in plaintiff's Statement. As of the filing of
 14 this motion, defendants have not received plaintiff's Pretrial Statement. Defendants are
 15 concerned that their ability to comply timely with the requirements of the Court and the Local
 16 Rules will be compromised by plaintiff's delay regarding this and subsequent deadlines.

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¹ Defendants were also in the process of preparing their own Pretrial Statement, although they had no Statement to which to respond, when the trial was rescheduled.

1 Defendants therefore request that the Court grant defendants seven days to serve their
2 Pretrial Statement from the date they receive plaintiff's Statement, and order plaintiff to comply
3 with all pretrial deadlines pursuant to Local Rule 16(m)(1).² In the alternative, defendants
4 respectfully request a telephonic status and scheduling conference, if that would be more
5 convenient for the Court.

6 Dated: February 21, 2013.

7 ROUTH CRABTREE OLSEN, P.S.
8

9 /s/ Heidi Buck Morrison
10 Heidi Buck Morrison, WSBA # 41769
11 Attorneys for Defendants OneWest Bank, F.S.B.,
12 Mortgage Electronic Registration Systems, Inc.,
13 and Northwest Trustee Services, Inc.

14 LARKINS VACURA LLP
15

16 /s/ Joseph D. Mueller
17 Julie R. Vacura, WSBA # 34588
18 Joseph D. Mueller, OSB # 111780 (*pro hac vice*)
19 Attorneys for Defendant OneWest Bank, F.S.B.
20 and Mortgage Electronic Registration Systems,
21 Inc.

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26 ² Other than conferral, which defendants have attempted, defendants were unable to discern any
mechanism to compel compliance with pretrial deadlines other than filing this motion. Defendants hope
that by filing this motion now, further need for appeals to this Court will be limited.

CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On February 21, 2013, I served the following document(s) described as:

DEFENDANTS' MOTION TO SET PRETRIAL DEADLINE AND COMPEL COMPLIANCE WITH DEADLINES

on the party or parties listed on the following page(s) in the following manner(s):

- BY HAND DELIVERY:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by messenger to the street address(es) indicated on the attached service list.
- BY FEDERAL EXPRESS:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by Federal Express to the street address (es) indicated on the attached service list.
- BY FIRST-CLASS MAIL:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be deposited in the United States mail at Portland, Oregon, with first-class postage thereon fully prepaid and addressed to the street address(es) indicated on the attached service list.
- BY FACSIMILE:** For each party, I caused a copy of the document(s) to be sent by facsimile to the facsimile number(s) indicated on the attached service list. If this action is pending in Oregon state court, then printed confirmation of receipt of the facsimile generated by the transmitting machine is attached hereto.
- BY E-MAIL:** For each party, I caused a copy of the document(s) to be sent by electronic mail to the e-mail address(es) indicated on the attached service list. If this action is pending in Oregon state court, then I received confirmation that the e-mail was received.
- BY ECF:** For each party, I caused a copy of the document(s) to be sent by electronic mail via ECF to the e-mail address(es) indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

/s/ Joseph D. Mueller
Joseph D. Mueller

Ha Thu Dao
hadaojd@gmail.com
Attorney for Plaintiff